

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC-B” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT**

<b>ITA No.512/Bang/2021</b>
<b>Assessment Year : 2017-18</b>

Mallika Iyengar, No.405, 12 <sup>th</sup> Main, RMV Extention, Sadhashivnagar, Bengaluru – 560 080. <b>PAN : ACOPI 2387 J</b>	Vs.	ITO, Ward – 6(3)(2), Bengaluru.
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Assessee by	:	Shri. K. S. Nagesh, CA
Revenue by	:	Shri. Ganesh R. Ghale, Standing Counsel for the Department

Date of hearing	:	08.12.2021
Date of Pronouncement	:	13.12.2021

**ORDER**

This is an appeal filed by the assessee against order dated 12.08.2021 of CIT(A) National Faceless Appeal Centre (NFAC), Delhi, relating to Assessment Year 2017-18.

2. The only issue that arises for consideration in this appeal is as to whether the CIT(A) was justified on addition of Rs.2 lakhs and Rs.5 lakhs respectively under section 68 of the Income Tax Act 1961.

3. The assessee is an individual. She is a spinster and lives with her 86 years old father. During the previous year relevant to assessment Year 2017-18, the assessee deposited a sum of Rs.30 lakhs in cash in her Bank A/c. The source of funds for cash deposit to the extent of Rs.22 lakhs received from assessee's father and two sisters of Rs.13 lakhs, Rs.4 lakhs and Rs.5 lakhs was accepted by the AO. The AO did not accept the explanation of source of cash

from Shri. Narayan Iyengar HUF (hereinafter referred to as HUF) of Rs.3 lakhs and from Shri. Upendra, brother of the assessee of a sum of Rs.5 lakhs. Mr Upendranath's name has been wrongly referred to by the AO in the Order of Assessment as K. S. Vasundhra.

4. With regard to the receipt of cash of Rs.3 lakhs by the assessee from HUF, the assessee filed a confirmation from M. S. Narayana Iyengar, Kartha of the HUF, that a sum of Rs.3 lakhs is given by the HUF to the assessee on 10.11.2016 who also is also member of the HUF. A copy of the Income tax Returns of the HUF for Assessment Year 2016-17 and 2017-18 was also filed. The total income declared by the HUF in these returns was a sum of Rs.2,49,930/- and Rs.2,52,000/- respectively.

5. The AO did not accept the explanation given by the assessee for three reasons: (a) Income declared by HUF for Assessment Year 2017-18 was only Rs.2,52,000/- which is less than Rs.3 lakhs given to the assessee (b) HUF did not give any reply to the AO's notice dated 30.10.2016 under section 133(6) of the Act; (c) assessee did not prove that cash was given to the assessee as gratis.

6. Before CIT(A), the assessee pointed out that HUF had given reply on 13.11.2019 to notice of AO under section 133(6) of the Act affirming giving of Rs.3 lakhs to the assessee and furnishing Income Tax Returns for Assessment Years 2016-17 to 2019-20. The assessee pointed out that the AO presumed that Rs.3 lakhs was given by HUF out of income of HUF for Assessment Year 2017-18, ignoring the past savings of the HUF as evidenced by Income returned for Assessment Years 2016-17 to 2019-20.

7. The assessee accordingly prayed that the addition made should be deleted. CIT(A) without considering the aforesaid submissions merely observed that the assessee did not give supportive evidence and plausible explanations.

8. I have considered the submissions of the learned Counsel for the assessee who reiterated the stand of the assessee as put forth before the CIT(A). I find that the AO disbelieved receipt of cash from the HUF on the ground that the income of HUF declared for Assessment Years 2016-17 and 2017-18 was not sufficient to prove the gift of Rs.3 lakhs given by the HUF. The AO also mentioned that the HUF did not respond to the notice by the AO under section 133(6) of the Act which is not correct and a reply was filed by the HUF on 13.09.2019 reiterating the fact that the HUF has given Rs.3 lakhs cash as gratis. The AO and CIT(A) in our opinion proceeded on the basis that the current year's income should have been more than Rs.3 lakhs and only then the payment of cash of Rs.3 lakhs to the assessee can be justified. In coming to this conclusion, they have ignored the fact that the HUF had declared income in the past and did not doubt the availability of accumulated cash from past savings. Keeping in mind the facts of the case, I am of the view that the addition of Rs.3 lakhs being cash received from HUF cannot be sustained and the same is directed to be deleted.

9. The assessee also submitted that a sum of Rs.5 lakhs was received as cash from Upendranath, Brother of the assessee. Before the AO, the assessee had filed confirmation of Upendranath in which Upendranath submitted that he had given on 10.11.2016 cash of Rs.5 lakhs to the assessee and this was repayment of loan of Rs.5 lakhs which Upendranath had availed from the assessee. The AO did not accept the explanation offered by the assessee for the following reasons:

*“05. The assessee has stated that she has paid Rs. 5,00,000/- to Sri Upendranath in cash, which was repaid back to her and this accounted for the said amount of cash deposit. The assessee in her submission dated 19.10.2019 has claimed that the amount was given as loan out of money received from her mother's estate which is shown in her return of income for the relevant AY 2014-15. It is to be noted that the assessee did not file income tax return for AY 2014-15 and AY 2015-16 stating that her income was less than the minimum income limit required to file the return. Thus, the transaction of hand loan without income available to the assessee cannot be accepted. As the loan given could not be established, repayment of loan amount as explanation for cash deposit cannot be accepted. Further, assessee could not prove the identity of Sri Upendranath as to evidence of that person existing nor the actual details of transaction (except for photo copy of undated letter) is given. No reply was received for 133(6) issued to Sri Upendranath. Therefore, the amount of Rs. 5,00,000/- cash deposit in her bank A/c explained as loan repayment from Sri Upendranath is disallowed and added to the income of the assessee u/s 68 of Income Tax Act as unexplained cash credit.”*

10. The CIT(A) confirmed the order of the AO for the very same reasons. On this aspect, I find that Upendranath has acknowledged that he had received a sum of Rs.5 lakhs as loan from the assessee in the previous year relevant to Assessment Year 2014-15. The Balance Sheet to this effect was filed by the assessee before CIT(A) which was not accepted for the reason that the assessee had not filed Return of Income for Assessment Year 2014-15 as her income was below taxable limit. In my view, the source of funds for the assessee having been given loan of Rs.5 lakhs to Upendranath in Assessment Year 2014-15 cannot be a subject matter of investigation in Assessment Year 2017-18. As far as the payment of Rs.5 lakhs by Upendranath is concerned, I find that Upendranath has acknowledged having paid a sum of Rs.5 lakhs to the assessee on 10.11.2016 by cash. Upendranath has been filing his Return of Income and the copy of Return of Income filed by him for Assessment Years 2016-17 to 2019-20 have been filed before the lower authorities. These facts

have been overlooked by the Revenue authorities. The identity of Upendranath cannot be disputed because even in the ground of appeal raised by the assessee before the CIT(A), specific assertion was made by the assessee in reply to the notice issued by the AO under section 142(1), the assessee has given all the details of Upendranath including his address and PAN number. These facts have not been considered by the AO or the CIT(A). I am of the view that the assessee has sufficiently established the identity, capacity and genuineness of the transactions and in the circumstances, the addition made cannot be sustained. The same is directed to be deleted.

11. In the result, appeal of the assessee is allowed.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(N. V. VASUDEVAN)**  
**Vice President**

Bangalore.  
Dated: 13.12.2021.  
/NS/\*

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT        | 4. CIT(A)     |
| 5. DR         | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.